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JUDICIAL COUNCIL

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Judicial Council of British Columbia

The Honourable Geoff Plant
Attorney General
PO Box 9044 Stn Prov Govt
Victoria, BC V8W 9E2

Dear Mr. Attorney:

I am very pleased to present the Annual Report of the Judicial Council of British Columbia for the years 1999 to 2001. Over these three years, 115 applicants for appointment to the position of Provincial Court Judge were interviewed, 14 of whom were recommended to your office and received appointments within the relevant period. In addition, the Council interviewed 45 applicants for the position of Judicial Justice of the Peace, 15 of whom received appointments. During the relevant years, 401 complaints were processed by the Office of the Chief Judge, all of which were resolved at the examination stage under section 11(2) of the *Provincial Court Act*.

I am confident you will agree that the Judicial Council has continued over the past three years to fulfill its mandate to maintain a high quality of justice in the Provincial Court, through the performance of its objects and functions under section 22 of the *Act*.

This report is prepared with the intention of enhancing the public's access to information regarding the Court and the Judicial Council, and I respectfully suggest that it be widely distributed. It will be posted on the Provincial Court website, www.provincialcourt.bc.ca.

Sincerely,

The Honourable Chief Judge Carol Baird Ellan
Chair, Judicial Council of British Columbia

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Table of Contents

1. Introduction 1

2. Meetings 3

3. Appointment Process for Judges 5

4. Judicial Justice of the Peace Appointment Process 11

5. Justice of the Peace Appointment Process 14

6. Judicial Education 17

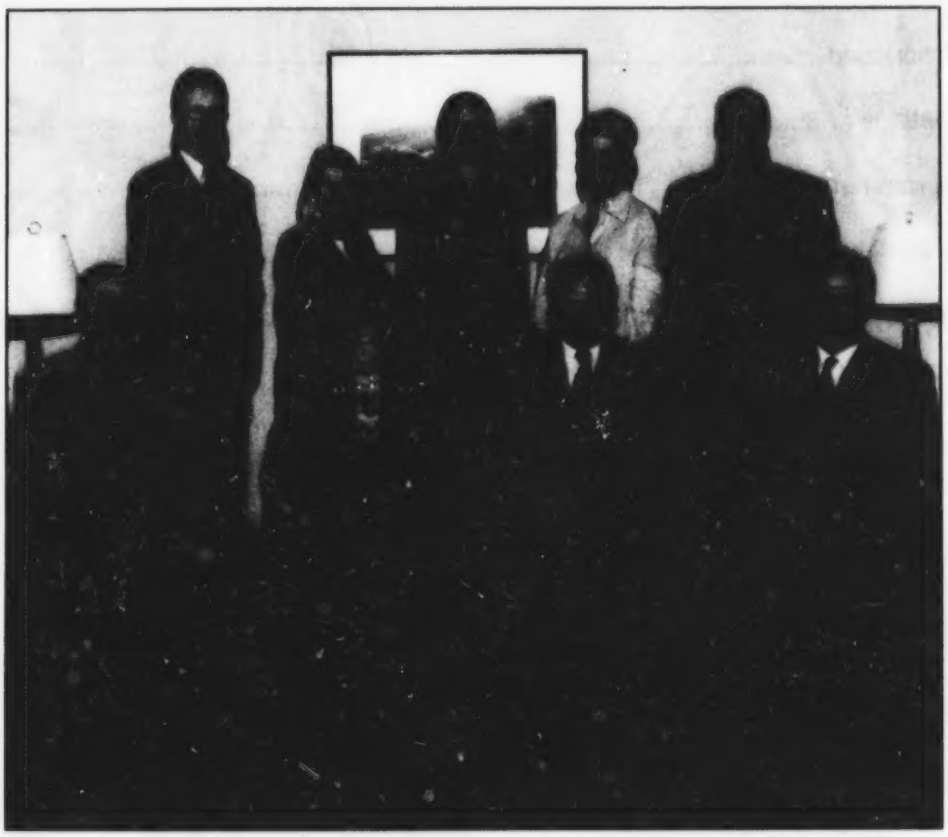
7. Complaints 19

Appendices

A Procedure Bylaw 26

B Statutory Provisions Governing Complaints 29

JUDICIAL COUNCIL OF BRITISH COLUMBIA — 2001



(Standing — left to right) — Mr. Peter J. Wilson, Q.C., Dr. Wendy M. Kendal, The Honourable Chief Judge Carol Baird Ellan, Professor Marilyn J. Callahan and Councillor John B. Braithwaite.

(Seated — left to right) — The Honourable Judge Robert A. Higinbotham, Margaret Ostrowski, Q.C., Judicial Justice of the Peace Phillip Lim and The Honourable Associate Chief Judge Hugh C. Stansfield.

1. INTRODUCTION

The Judicial Council of British Columbia, a statutory body created by section 21(1) of the *Provincial Court Act*, R.S.B.C. 1996, Chap. 379, entered its 32nd year on July 21, 2001.

The prescribed objects and functions of the Council under section 22 of the *Act*, as set out below, have remained unchanged since the Council's inception:

22. The object of the council is to improve the quality of judicial service, and its functions include the following:

    (a) considering proposed Lieutenant Governor in Council appointments of judges, justices and court referees;

    (b) conducting inquiries respecting judges, justices and court referees;

    (c) considering proposals for improving the judicial services of the court;

    (d) continuing the education of judges and organizing conferences of judges;

    (e) preparing and revising, in consultation with the judges, a code of ethics for the judiciary;

    (f) reporting to the Attorney General on the matters the Attorney General considers necessary.

The nine members of the Judicial Council are prescribed in section 21(2) of the *Act*:

21 (2) The members of the council are the following:

    (a) the chief judge as presiding member;

    (b) the associate chief judge as alternate presiding member or, if 2 or more associate chief judges are designated, the associate chief judge designated as alternate presiding member by the Lieutenant Governor in council;

    (c) the treasurer of the Law Society of British Columbia or a person nominated by the treasurer;

    (d) the president of the British Columbia Branch of the Canadian Bar Association or a person nominated by the president;

    (e) by appointment of the Lieutenant Governor in Council for a term of not longer than 3 years, a judge and not more than 4 other persons.

The members of the Council at December 31, 2001, shown in the photograph on page ii, and the dates of their appointment to the Council, were as follows:

1. The Honourable Carol Baird Ellan, Chief Judge and presiding chair, July 7, 2000.
2. The Honourable Hugh C. Stansfield, Associate Chief Judge, alternate presiding member, January 1, 2001.
3. Peter J. Wilson, Q.C., nominee of the president of the Law Society of B.C., January 8, 1998.
4. Margaret Ostrowski, Q.C., President of the Canadian Bar Association, B.C. Branch, January 1, 2001.
5. The Honourable Robert A. Higinbotham, 2001 president of the B.C. Provincial Court Judges' Association, January 1, 2001.
6. Professor Marilyn J. Callahan, May 20, 1992.
7. Councillor John B. Braithwaite (City of North Vancouver), October 28, 1993.
8. Dr. Wendy M. Kendal, family physician, April 15, 1997.
9. Phillip Lim, Judicial Justice of the Peace, April 14, 1994.

The members of Judicial Council for 1999 were Chief Judge R.W. Metzger, Associate Chief Judge E.D. Schmidt, Judge G.G. Sinclair, Judicial Justice P. Lim, P.J. Wilson, Q.C., Mr. M.J. Brecknell, Professor M.J. Callahan, Councillor J.B. Braithwaite, and Dr. W.M. Kendal.

The members of Judicial Council for 2000 were Chief Judge R.W. Metzger (replaced by Chief Judge Carol Baird Ellan on July 7, 2000), Associate Chief Judge E.D. Schmidt, Judge M.C. Borowicz, Judicial Justice of the Peace P. Lim, Mr. P.J. Wilson, Q.C., Mr. J.D. Waddell, Q.C., Professor M.J. Callahan, Councillor J.B. Braithwaite, and Dr. W.M. Kendal.

2. MEETINGS

Throughout the period 1999 to 2001, Judicial Council met approximately once per month. Meetings were held on the following dates:

1999	2000	2001
January 8	January 21	January 19
February 5	February 4	February 23
March 5	March 3 and 31	March 23
April 9	April 14	April 19 and 20
May 7	May 12	May 25
June 4	June 9	June 29
September 10	September 8	July 26 and 27
October 1	October 13	September 28
November 5 and 19	November 3 and 17	October 19
December 3	December 8	November 16
		December 14

At most meetings, the Council reviewed applications for appointment of Judges and Justices of the Peace, and conducted interviews of potential candidates. The number of applications for Provincial Court Judge reviewed and interviews held per year are shown in the following chart. More information about the review and interview process for Judges may be found under the heading *Appointment Process for Judges*, below.

JUDICIAL COUNCIL APPLICATIONS SUMMARY

	Applications Received			Applications Reviewed[1]			Applicants Approved for Interview			Applicants Interviewed			Applicants Approved[2]			Applicants Appointed[3]		
Year	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F
1999	63	39	24	44	27	17	35	20	15	34	17	17	16	9	7	10	7	3
2000	52	29	23	54	28	26	36	17	19	44	23	21	23	14	9	3	2	1
2001	75	56	18	53	43	10	39	32	7	37	26	12	12	10	2	1	0	1

[1] Judicial Council started the review of applications in 1996.

[2] The number of applicants approved reflects applicants approved in the relevant year, regardless of when they applied.

[3] The number of applicants appointed reflects applicants approved in the relevant year who received appointments prior to December 31, 2001.

In 1999 and 2001, Judicial Council also recruited and approved for appointment a number of Sitting Justices of the Peace. The members of this division of the Court are now referred to as Judicial Justices of the Peace, following amendments to the *Provincial Court Act* in April 2001. The jurisdiction of these Justices of the Peace was expanded following the amendments, to include the hearing of bail and search warrant applications. These changes are discussed in more detail below under Judicial Justices of the Peace. The number of Sitting or Judicial Justice applications reviewed and interviews conducted in the relevant period are shown in the following chart, as well as the number appointed. In each case where applications were solicited, a select committee of Judicial Council met separately from the regular meetings to review all the applications and recommend a number for interview.

	September 1999	April 2001	May 2001
Applications received	410	100	309
Applicants interviewed	14	19	12
Applicants appointed	3 full time, 2 ad hoc	7	3

In addition to sitting judicial officers, Judicial Council also reviews and recommends candidates for appointment as non-presiding Justices of the Peace, in some cases as employees of the Court Services Branch, and in others as Stipendiary,* or part-time, Justices of the Peace. The number of Justice of the Peace applications reviewed, recommended and approved in the years 1999, 2000 and 2001 are set out below.

	1999	2000	2001
Applications reviewed	27	11	14
Applicants approved	14	6	13
Applicants appointed	14	13	8

*But see comments in Part 5.

Judicial Council held a planning meeting in November 2000 to review its prescribed object of improving the quality of judicial services of the Court, and its functions such as judicial education and the approval process for applicants. A number of revisions to the voting procedure and process of reviewing applications resulted. The procedure followed by the Council in reviewing and voting for applicants may be found in the Procedure Bylaw at Appendix A, and is described more fully in Part 3 below.

3. APPOINTMENT PROCESS FOR JUDGES

Under section 6 of the *Provincial Court Act*, Provincial Court Judges are appointed by the Lieutenant Governor in Council, on the recommendation of the Judicial Council. The Council reviews applications for appointment, conducts interviews, and approves candidates for recommendation. When an opening arises, the Chief Judge as chair of Judicial Council sends to the Attorney General the names of recommended candidates who are eligible to sit in the region where the appointment will be made.

The process by which Judicial Council considers applicants for recommendation underwent some revision at a planning meeting of Judicial Council on November 17, 2000. The procedure set out below reflects these changes, but will be contrasted with the prior procedure, where revised. At that same meeting, Judicial Council agreed on a policy of increased transparency with respect to the appointment process and the procedure followed by the Council in its deliberations.

Criteria

The following are the criteria against which Judicial Council considers applications for appointment of Provincial Court Judges. The italicized portions were added following the planning meeting:

1. Normally 10 years in the practice of law. Those with less legal practice are considered if they have a range of related experience.

2. Legal reputation, including reference from the Canadian Bar Association and judges before whom the applicant has appeared, and review of professional record from the Law Society of British Columbia.

3. General knowledge of *and experience in* the law *and provincial court procedure*, preferably with recent practice in criminal, family and/or civil litigation.

4. *Experience in mediation or alternative dispute resolution.*

5. Willingness to learn and demonstrated commitment to *continuing* professional education.

6. Knowledge of and sensitivity to current issues facing the courts, the judiciary *and the justice system.*

7. Ability to listen and communicate effectively.

8. Personal characteristics; such as decisiveness, even*ness* of temperament, fairness, *open-mindedness*, and common sense.

9. Compassion for those coming before the court and an understanding of their circumstances.

10. Respect in the community.

11. Good health.

12. Passion *and enthusiasm*..

13. *Balanced relationships with peers and subordinates.*

14. Adaptability and flexibility with respect to job changes.

15. Humility.

16. Appreciation of *and experience with* diversity.

17. *Demonstrated dedication to* public service.

18. Ability to cooperate and work with others.

19. Understanding of the role of the court in society *and respective roles of the judiciary and other participants in the justice system.*

20. *Willingness to travel and to sit in all subject areas.*

These criteria are not viewed as collective prerequisites or an exhaustive list, rather they are used as guidelines against which Judicial Council assesses applications and conducts interviews.

Application and Approval Process

Applications for judicial appointment are submitted on a Judicial Candidate Information Summary. The form was revised in 2001 by Judicial Council, pursuant to the November planning meeting, to include more information for applicants and to elicit more information from them. The package of materials accompanying the application contains information to all applicants regarding the application and interview process, in the interest of transparency, and to ensure that applicants understand and consent to the extensive investigation that will be initiated with the making of an application. A sample form may be found at www.provincialcourt.bc.ca.

The Chief Judge requests a Bar report on every applicant, from the Advisory Committee to Judicial Council, which is a committee of the B.C. Branch of the Canadian Bar Association. A report on the applicant's standing is also requested from the Law Society. In preparing the Bar report, members of the CBA committee make discreet inquiries of members of the legal community regarding the applicant's reputation and suitability. Judicial Council also seeks comments from Judges who are familiar with the applicant or who sit in the area in which the applicant practises.

Once the Bar report is received, generally within a few months of the application being made, Judicial Council will consider at a meeting whether to interview the applicant. The members present will review the Bar report, the Law Society report, and the Judges' comments, in light of the criteria above, in deciding whether the applicant will be interviewed. At the November 2000 meeting, Judicial Council resolved that three members' votes in favour of an applicant should be required in order to grant an interview. Originally, Judicial Council interviewed all applicants, but a decision was made in 1996 to review applications, and hold a vote as to whether to interview applicants. Until November 2000, two votes in favour of an interview were sufficient. Judicial Council considered that, given the proportion of approved applicants as related to the number interviewed, fewer interviews could be held. There were also problems with delays, with some applicants waiting almost a year to be interviewed. The Procedure Bylaw contained in Appendix A was adopted in May 2001 to reflect these resolutions.

Judicial Candidates are not notified if they are not approved for interview. This policy has been continued following the November 2000 meeting, as it was felt that to inform unsuccessful applicants may invite debate or requests for review. Appointment processes and decisions are not reviewable as a matter of law: *McInnes v. Onslow-Fane* [976 M. No. 6063], The Weekly Law Reports, December 15, 1978.

Candidates who are approved for an interview are generally interviewed within a year following the date of their application. At any given time, Judicial Council has a pool of approximately two dozen candidates approved for interview. Bar reports are generally pending on a similar number of applications.

Several applicants for appointment as Judges are interviewed at most meetings, unless a special meeting is called, or a meeting is dedicated to interviews of Justices of the Peace. At regular meetings, Council also reviews any applications on which Bar reports have been received, usually between four and ten applications.

At the interview, each member present asks the applicant several questions. The questions are designed to assist the Council in assessing the applicant's suitability against the criteria set out above, and to address any issues raised in the Bar or Law Society reports. Following the interview, the members review the candidate's application, the Bar and Law Society reports, and comments received from Judges, discuss the applicant, and decide by a vote whether to approve the candidate.

Formerly, a majority vote was taken as to whether an applicant should be placed in one of three categories, Category One being those approved for appointment, Category Two being those who might be considered later, and Category Three being those who were unsuitable (in theory, not to be considered later).

The Council recognized that in practice, Categories Two and Three were indistinguishable, as those in Category Two were never reconsidered within the three-year currency of their application, and those in Category Three were equally able to reapply after their application expired. Further, the Council was concerned that a majority vote in favour of a particular category might represent only three members (or one-third) of Council, if a quorum of only five were present. Finally, the Council noted that recorded votes against a motion to include an applicant in a particular category did not disclose which of the other two categories the negative voters favoured.

The process of categorizing unsuccessful applicants was therefore perceived to be unnecessary and the Council agreed that the voting process should be revised. At the November 2000 meeting, Judicial Council resolved that two categories were sufficient, and that motions would be either in favour of or against approval. In either case, it was decided that two votes against approval would defeat the candidate, regardless of the number of members present. Accordingly, even where a bare quorum of Council members voted, at least four members' votes would be required for approval, and the likelihood of approvals occurring without favourable votes by a majority of Council members was therefore reduced, though not eliminated. The Procedure Bylaw at Appendix A reflects these resolutions.

It is important to note that these revisions to the selection process were not engendered by any problems perceived with prior appointments, but rather in order to reduce the future potential for anomalous approvals. This "raising of the bar" was felt necessary in recognition of the increasingly complex and varied nature of the Court's work, and the accelerating workloads. Council was of the view that in light of its prescribed object of improving the quality of judicial service, the process should be modified so as to better ensure that only exceptional applicants who were unquestionably capable of meeting these increasing demands be approved for appointment.

Applicants are not notified as to whether they are approved for appointment, for reasons similar to those noted above regarding the decision to interview (see p. 7). Applicants who are not approved for interview may reapply three years after the date they originally applied. Applicants who are interviewed may reapply three years after the date of their interview. Applicants frequently reapply, some more than once, before receiving an appointment.

Demographics

Throughout the years 1999, 2000, and 2001, Judicial Council had an average pool of approximately three dozen approved applicants. At the end of December 2001, this pool consisted of 24 men and 11 women. Eleven of these candidates were interviewed in 1999, 13 in 2000, and 11 in 2001. Twenty-eight of the approved candidates came from the Lower Mainland and most of those indicated that they preferred appointments to that area. The remaining seven were located in 5 of the remaining 9 administrative districts. While some were willing to relocate, many Court locations are not represented by resident candidates or candidates willing to relocate to that district. Efforts are sometimes made to accelerate the process, when an area is underrepresented and a vacancy in the area is anticipated. Otherwise, candidates are not interviewed or approved on the basis of where they reside or wish to preside. In all cases, applicants are assessed equally as against the appointment criteria.

The average number of applications received per year for the seven years to 2001 was 60, though there was significant fluctuation, ranging from a low of 48 in 1995 to highs of 70 and 75 in 1998 and 2001. The average number of applicants interviewed for those years was 34. The average number of approvals per year was 14.5, resulting in an average approval rate of about 40% of those interviewed, and about 25% of those who apply. This latter figure is skewed slightly by the number of approvals in 2000, which was 23 approvals for 44 interviews. Setting aside that year, the average rate of approval was about 22% of those who apply, though that rate may decline with the changes to the approval process described above.

The average number of Judges appointed per year for the last ten years to 2001 was 8, and for the most recent six of those years, 7, or about 11% of total applicants, and about 45% of annual approvals. Receiving an appointment after approval is largely dependent upon an opening becoming available in an area where the candidate is available for appointment. In the case of candidates from remoter regions or those who are highly mobile, of course, the likelihood of appointment is greater than for those who are from the Lower Mainland.

The average age of applicants to the Court for Judge appointments in the last few years is about 48, with an average of 17 years in practice. The average age and years of practice for appointees are the same, about 48 and 17. These averages appear to be increasing over time. The following chart shows the breakdown of applicants by age and gender in the relevant years.

Total Number of Applicants to Judicial Council by Age and Gender
1999-2001

Year	Total	Male	%	Average Age	Female	%	Average Age
1999	63	39	62%	48	24	38%	44
2000	52	29	56%	47	23	44%	43
2001	75	57	76%	50	18	24%	46

Female applicants have on average about five years less practice experience than male applicants. Of the 14 applicants who applied and were appointed between 1999 and 2001, nine were male and five were female. This is slightly higher than the average percentage of female applicants; 30% over those three years.

Since 1999, applicants have been given the opportunity to indicate on a voluntary basis whether they are members of equity groups, including race and culture, disability and sexual orientation. The breakdown of profile information of applicants is 9 members of self-reported equity groups (out of 63 applicants) for 1999, 11 (out of 62 applicants) for 2000, and 9 for 2001 (out of 75 applicants). A large majority of those who self-reported as members of equity groups were members of visible racial minorities. Applicants accordingly consisted on average of about 14% members of self-reported equity or diversity groups.

It is difficult to say whether the applicant pool reflects that of the Law Society of B.C., which did not collect data regarding ethnicity or equity groups until recently. Using Census Canada data, Ferguson (1997) concluded, not surprisingly, that those of British origin were *over represented* in the population of lawyers according to their presence in the overall population, those of European origin, *fairly represented*, and those of South Asian, East Asian and Aboriginal, seriously *under represented*. Two new reports, Lawyers with Disabilities (2001) and Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers (2000), may help to increase diversity in the bar, and therefore in applicants to Judicial Council.

The following chart shows the numbers of applicants in the relevant years from private practice, Crown counsel and other areas of practice.

	1999	2000	2001
Private practice	46	37	53
Crown counsel	8	11	16
Other areas of practice	9	4	6

In the same period, of those appointed to the Court, 50% were from private practice, about 30% from Crown Counsel, and the remainder from other areas of practice.

4. JUDICIAL JUSTICE OF THE PEACE APPOINTMENT PROCESS

Formerly called Sitting Justice of the Peace, Judicial Justices of the Peace (JJPs) received a new designation by amendment to the *Provincial Court Act* effective in April, 2001. That same amendment gave Judicial Justices of the Peace enhanced security of tenure and financial security, in keeping with their judicial role, and in response to a decision of the B.C. Supreme Court declaring them to have insufficient safeguards of judicial independence (*Reference re Sitting Justices of the Peace*, B.C.S.C. October 2000, Sigurdson J.)

Judicial Justices of the Peace are assigned by the Chief Judge to preside over traffic and bylaw matters and ticketable offences under Provincial legislation, and to sit in payment hearings in Small Claims Court.

As of April 2001, Judicial Justices of the Peace also staff the Justice Centre, doing search warrants and bail, primarily by telecommunications. These duties were added to the assignments of JJPs in response to a further decision of the B.C. Supreme Court (*R. v Do*, Hutchinson J., April 20, 2001) which held that Court Services Justices of the Peace did not have sufficient safeguards of judicial independence to hear applications for search warrants.

The Justice Centre provides 24 hour, 7 day a week access to Judicial Justices of the Peace, for police officers and Crown Counsel seeking search warrants, and for judicial interim release (bail) hearings of arrested persons. The Centre is located at 222 Main Street in Vancouver, B.C. Judicial Justices at the Centre issue federal and provincial search warrants by telecommunications, and preside over bail hearings, also by telecommunications. Occasionally applications are made in person at the Centre. The constant staffing of the Centre is intended to enable police forces throughout the province to obtain search warrants in a timely way, and facilitates the expeditious consideration of the custodial status of persons who have been arrested and detained.

The following is an outline of the Appointment Process for Judicial Justices of the Peace, following the receipt of applications. Under the *Provincial Court Act*, Judicial Justices are appointed by the Lieutenant Governor in Council on the recommendation of the Judicial Council. Judicial Council reviews applications, conducts interviews, and approves candidates for appointment. The Chief Judge sends to the Attorney General the names of approved candidates recommended for appointment to available vacancies.

Judicial Council assesses each applicant using criteria which include: understanding of judicial independence, general knowledge of and experience in Provincial Court procedure, willingness to learn and a demonstrated commitment to ongoing professional education, knowledge of and sensitivity to current issues facing the courts, the judiciary and the justice system, ability to listen and communicate effectively, personal characteristics such as decisiveness, evenness of temperament, fairness,

open-mindedness and common sense, compassion for those coming before the Court and an understanding of their circumstances, respect in the community, good health, passion and enthusiasm, balanced relationships with peers and subordinates, adaptability and flexibility with respect to job changes, humility, appreciation of and experience with diversity, demonstrated dedication to public service, ability to cooperate and work with others, understanding of the role of the court in society and respective roles of the judiciary and other participants in the justice system.

Applications for appointment as a Judicial Justice of the Peace are submitted on a standard Justice of the Peace application form. A sample form may be found at www.provincialcourt.bc.ca. When applications are received, in recent practice, the Judicial Council has struck a Select Committee to consider which applicants should be recommended for interview. Judicial Council then considers whether the recommended applicants will be interviewed. For those who are interviewed, references are contacted for their comments regarding suitability for appointment.

The interview takes place at the Office of the Chief Judge. At least five members of Judicial Council must be present, and all nine members usually participate. Each member present asks the applicant a series of questions designed to assess their suitability, and to address any issues raised in the application. Following the interview, the members consider the candidate's application, the comments of their references, and any comments received from Judges, and decide whether to approve the candidate. As with Judge applicants, if two members vote against the candidate, approval is not given.

In April 2001, following legislative and administrative changes to the office of Judicial Justice of the Peace, Judicial Council resolved to consider applications for the position of Judicial Justice of the Peace in the same fashion as those of Provincial Court Judge, namely:

1. Applications may be submitted at any time;

2. When received, applications are initially reviewed by Judicial Council for decision as to whether the applicant will be interviewed. Candidates are not advised of that decision unless through receipt of an invitation to attend for interview.

3. Candidates who are interviewed are not advised whether Judicial Council does or does not recommend the candidate to be eligible for appointment.

4. Recommended candidates are maintained for 3 years from date of application in a "pool" of recommended candidates from which the Attorney General may make appointments as and when positions become vacant.

5. All applicants are eligible to reapply after 3 years from the later of the date of their previous application or the date of their interview, if any.

The average number of Judicial Justices of the Peace appointed in the relevant three years was five per year, though this figure is not reliable as a trend in view of the legislative and administrative changes to the office of Judicial Justices of the Peace, which resulted in a spate of appointments in 2001. Those same changes have contributed to a suspension of Stipendiary Justice of the Peace appointments, with the result that no appointments of Stipendiary Justices of the Peace have been recommended since 1999.

The average age of applicants appointed as Judicial Justices of the Peace in the relevant three years is 49. Applicants are not asked to self report membership in equity or minority groups. Approximately 25% of appointees in the relevant years were members of visible minorities or known equity groups. Eight were male and seven were female.

5. JUSTICE OF THE PEACE APPOINTMENT PROCESS

Stipendiary Justices of the Peace

Stipendiary Justices of the Peace work part time on a call-out basis, and hold a variety of occupations in everyday life in addition to their responsibilities for the Court, provided there is no perceived conflict between their occupation and their Justice of the Peace duties. The need of the community has historically determined the appointment of Stipendiary Justices of the Peace, based on the population, size of the police force and the degree of community isolation.

Certain recent legislative and administrative changes to the office of Judicial Justices of the Peace contributed to a suspension of Stipendiary Justices of the Peace appointments, with the result that no appointments of Stipendiary Justices of the Peace have been recommended since 1999. While it is not anticipated that any such appointments will be made in the near future, the applicable appointment process is set out below.

a. When a need for a Stipendiary Justice of the Peace appointment is identified for a location, for instance, the current Justice of the Peace has retired or resigned or there has been an increase in population resulting in increased criminal activities, the vacancy is advertised in the local newspaper. Interested people are asked to submit an application form to the Office of the Chief Judge.

b. When the applications are received, they are checked to see if all pertinent information is included. They are then submitted to Judicial Council with a summary of information about the candidate, which may include the date of birth of the candidate, the occupations of the candidate and their spouse, memberships and positions held in the community, any "yes" answers in the "personal suitability" section of the application, and anything else that may be of interest to Judicial Council. Judicial Council is alerted to any potential problems with the candidates such as a real or perceived conflict of interest.

c. Judicial Council will peruse the applications and select a few for interview by the applicable Administrative Judge. A police record check is conducted on these applicants.

d. The applications are sent to the Administrative Judge with some guidelines for the interview. The Administrative Judge may designate a local Judge to interview the candidates, based on the following criteria:

    (1) The applicant's existing relationship (if any) with the local police or sheriff which may impede his/her independence. Does the candidate

know of any potential conflict of interest concerning this position that may impede his/her ability to perform Justice of the Peace duties?

(2) Ability to learn, communicate effectively and make independent decisions.

(3) Willingness to attend courses, i.e. 5 or 6 days basic training and 2 days every second year advanced training.

(4) Availability of the candidate to the police, i.e. is the candidate frequently out of town or otherwise unavailable to perform call-out duties.

If the interviewing Judge is satisfied regarding the applicant's qualifications, he or she submits a written recommendation to the Council.

e. The recommendation and applications are again submitted to the Judicial Council for approval and recommendation.

f. The names of recommended candidates are then submitted to the Attorney General for approval.

g. All approved candidates must attend and complete the basic training course before they are recommended for appointment.

Court Services Justice of the Peace Appointment Process

Court Services Justices of the Peace work in Court registries throughout BC. Besides their Justice of the Peace duties, which are assigned by the Chief Judge, they hold various administrative positions in the Court Services branch of the Ministry of the Attorney General including Court Manager, Administrator and Court Clerk. The applicable process for appointment is as follows:

a. A Court Manager in the relevant location will contact the Office of the Chief Judge (in writing) when they need a Justice of the Peace appointment, for instance, to fill a vacant position or to accommodate an increase in workload.

b. In the case of a vacant position, the position is posted and a competition is held. The successful candidate will submit an application to Judicial Council for appointment as a Justice of the Peace.

c. When the application is received, it is reviewed by the Office of the Chief Judge staff to ensure it is properly completed and to identify any potential

problems with the candidate such as conflicts of interest. A police record check is also conducted.

d. The application is then forwarded to the Administrative Judge with a request that he or she confirm the need for the appointment and interview the candidate according to the following guidelines:

(1) The applicant's existing relationship (if any) with the local police or sheriff which may impede his/her independence. Does the candidate know of any potential conflict of interest concerning this position that may impede his/her ability to perform Justice of the Peace duties?

(2) Ability to learn, communicate effectively and make independent decisions.

(3) Willingness to attend courses, i.e. 5 or 6 days basic training and 2 days every second year advanced training.

e. If the Administrative Judge is satisfied on these points, he or she will submit his/her recommendation to Judicial Council.

f. The Administrative Judge's recommendation and Court Manager's request for the appointment, together with the application, are submitted to Judicial Council for approval.

g. Applicants for Court Services Justice of the Peace appointments are not generally interviewed by the Council. If the candidates are approved by Judicial Council they are invited to attend the basic training course. If successful in the course, they are recommended for appointment.

6. JUDICIAL EDUCATION

Since the early 1970s the Court has had regular educational programs for Judges, mostly delivered by Judges, with the involvement of the Office of the Chief Judge and the Provincial Court Judges' Association of British Columbia. The Judicial Council has mandated a minimum of five days of education to be available to Provincial Court Judges who attend these educational seminars as part of their regular judicial assignments.

In recent years, Provincial Court Judges have attended two seminars per year. The seminars, which are offered in the Spring and Fall, last for two and one-half days each and are organized by the Education Committee of the Provincial Court Judges' Association in consultation with the Office of the Chief Judge. The seminars cover recent trends in the law, social context training, mediation skills, new legislation and issues of concern to judges and the public.

The regular sessions in the Spring and Fall of 1999, 2000 and 2001 have covered a wide range of topics reflecting the broad spectrum of decision making issues which Judges face on a daily basis. These seminars included:

- Principles of Sentencing
- Child Support Issues
- Spousal Support Issues
- Criminal Caseflow Management
- Admissibility of Statements
- Videoconferencing
- Computer Use and Application for Judges
- Recent Caselaw in Criminal Law
- Sentencing Addicted Adolescents
- Oaths and Affirmations
- Use of Interpreters
- Judicial Independence
- Issues in the Law of Evidence
- Domestic Assault
- Security Issues for Judges
- Child, Family and Community Services Act
- Family Court Updates
- Adult Guardianship Act
- High Risk Management
- Search Warrants
- Sentencing Aboriginal Offenders
- Custody and Access
- Credibility and Fact Finding
- Delivery of Oral Judgments

In addition, the Fall 2000 session, entitled *"Sentencing in the 21st Century: Challenges for Judges"* was devoted entirely to sentencing issues, with an emphasis on restorative justice. It included a wide range of presenters and panelists.

Judges are also encouraged to participate on courses not offered by the B.C. Association of Provincial Court Judges. These include a week-long training for all new Judges in Quebec under the auspices of the Canadian Association of Provincial Court

Judges, mediation training for new Judges and advanced mediation training for Judges currently conducting mediation in civil and child protection cases.

Judges who conduct trials in French in British Columbia attended French language training in Quebec in each of the years of 1999 to 2001.

Individual Judges also attended out of province courses and seminars on many topics, including the following:

- Drug Courts
- Court Administration
- Domestic Violence in the Courts
- Community Courts
- Settlement Conferences
- Advanced Caseflow Management
- Conflict Resolution, Children and the Courts

British Columbia is at the forefront of judicial education for Provincial Court Judges in Canada. The continuing success of our education program is due to the efforts of our Judges in educating their colleagues on the Provincial Court Bench.

The Judicial Justices of the Peace (formerly Sitting Justices of the Peace) are also mandated to attend annual education seminars. The topics covered in 1999-2001 were:

- Judicial Conduct and Comity
- Voir Dires and Admissibility of Statements
- Bylaws and Common Challenges
- Issues in Judicial Practice
- Computer Skills
- Delay under the Charter
- Stress Management and Dealing with Hostile Individuals
- Absolute and Strict Liability
- Issues in Photo Radar
- Reasonable Doubt
- Offence Act Procedures
- Judicial Activism
- Statutory Interpretation
- Credibility Issue
- Judicial Interim Release
- Small Claims
- Search Warrants
- Summary Conviction Appeals

The Justices of the Peace who are appointed as Stipendiary Justices of the Peace or Court Services Justices of the Peace also receive education though seminars have not been regularly conducted in the relevant years. During the years 1999-2001 courses were offered on the following topics: Search Warrants, Judicial Interim Release, Judicial Ethics and Conduct, Security for Bail/Sureties, Informations and Process, Family Law. In addition, five Justice of the Peace basic training programs were held at the Office of the Chief Judge and one Justice of the Peace advanced training was held in Richmond.

7. COMPLAINTS

The procedure and jurisdiction for the examination of complaints is set out in the *Provincial Court Act*, sections 11 and 24, contained in Appendix B. Complaints must be delivered in writing to the Chief Judge at the Office of the Chief Judge, P.O. Box 10287, Pacific Centre, 501 – 700 West Georgia Street, Vancouver, BC V7Y 1E8.

The authority of the Chief Judge in respect of complaints about judicial officers is restricted to issues of fitness and misconduct. It does not include the power to interfere in individual cases, to inquire into individual decisions of judicial officers (except where misconduct may occur during the proceedings), or to review legal errors or erroneous decisions (except where they may amount to incompetence affecting capacity to perform judicial duties). The Chief Judge also has no power to change the outcome of a ruling or decision, order a new trial, declare a mistrial, or overturn a decision. These are all remedies that must be sought by way of appeal or judicial review.

All letters regarding judicial officers which may contain complaints are initially referred to the Legal Officer, the Chief Judge or an Associate Chief Judge, for assessment. This initial assessment is generally completed within a week of receipt of the complaint letter. The person performing the assessment will decide at the outset whether the letter contains a potential complaint regarding a disciplinary issue or conduct of a judicial officer. These types of issues include allegations of inappropriate behaviour or remarks in proceedings, but not complaints that are in substance a request for legal advice, appeal, judicial review, or law reform. They will generally not include general complaints of bias, misapprehension of the issues or the facts, unfairness of trial, or mistake, unless they allege specific inappropriate statements, or appear to be part of a consistent course of conduct meriting an examination.

Complaints that relate to the outcome of a case, judicial officers' decisions, rulings, general procedural issues, other courts, conduct of parties other than judicial officers, or other matters outside the Chief Judge's authority, are disposed of by a letter to the complainant, explaining the complaint provisions, and if appropriate, suggesting applicable avenues of inquiry.

If a matter is identified as a potential complaint regarding misconduct of a judicial officer, section 11 of the *Act* requires that it be examined. The complainant will receive an acknowledgement letter advising that the complaint will be examined, and the judicial officer who is the subject of the complaint will be sent a copy of both letters and invited to provide a response to the allegation.

After examination, the Chief Judge (or an Associate Chief Judge acting as Chief Judge for these purposes) decides upon the appropriate course of action, within the options contained in the section. Section 11(3) requires that the judicial officer and the complainant receive a response in writing. Dispositions frequently take the form of an explanation of the judicial officer's behaviour (if it is found to be appropriate), or an

acknowledgement of the complaint with an expression of apology (if the conduct is found to be inappropriate). A large majority of complaints are resolved in this fashion, at the examination stage.

If the misconduct is such as to give rise to issues of fitness on the part of the judicial officer, and the Chief Judge considers that an investigation is required, section 11(3) of the *Act* provides that the Chief Judge must conduct an investigation respecting the fitness of the judicial officer to perform his or her duties. An investigation will also be conducted if the Chief Judge is directed by the Attorney General to conduct an investigation.

On completing an investigation, the Chief Judge may take any corrective action that the Chief Judge considers necessary, using the powers given the Chief Judge under the *Provincial Court Act*, or may order that an inquiry be held respecting the fitness of the judicial officer to perform his or her duties. The Chief Judge must submit to the Attorney General a written report setting out the nature of the investigation, relevant facts, the findings and any corrective action taken.

If the Chief Judge orders an inquiry, the Chief Judge must give written notice together with a copy of the investigation report to the judicial officer. In the history of the Court, there have been only 8 inquiries of this nature. There were none in the relevant years. These matters are heard either by Judicial Council, or by a Supreme Court Judge, as the judicial officer elects.

The number and nature of complaints received for the years 1996 to 2001 are set out below. For the period 1996 to 2000, complaints were divided into allegations regarding conduct of judicial officers, and "general" complaints. The record keeping procedure at the Office of the Chief Judge was revised in January 2001 to divide complaints into those which, following assessment, were considered appropriate for examination under section 11, and those which, following assessment, were not considered to be *Provincial Court Act* complaints. The record in relation to an examination now includes a summary of the nature of the complaint and the disposition made of it. The summaries for complaints examined after these changes are found on pages 21-25.

COMPLAINT STATISTICS – 1996 to 2000

	1996	1997	1998	1999	2000
Misconduct complaints against Judges	34	19	31	27	33
Misconduct complaints against Justices of the Peace	1	1	6	4	4
Misconduct complaints against Sitting Justices of the Peace	10	3	4	7	7
Total new misconduct complaints	45	23	41	40	44
Outstanding misconduct and general complaints	8	3	3	11	4
General Complaints	60	64	73	96	90
Total misconduct and general complaints	**113**	**90**	**117**	**147**	**138**

2001 COMPLAINT STATISTICS – at December 31, 2001

Letters received	120
Non-complaints (those found not to be within Section 11)	92
Examinations performed (complaints) as summarized below	24
Resolved by letter to complainant and judicial officer	116
Outstanding	4

COMPLAINT SUMMARIES - 2001

1	Unsuccessful litigant alleged Judge treated him rudely and was intimidating and unhelpful, and prejudged his "persona."	The tape of the proceedings showed that the complainant was not treated in an intimidating, unhelpful or rude fashion. It was also apparent that the Judge approached the complainant's case in the same fashion as that of the other party, that he/she listened fully to the complainant's evidence, and that he/she took it into account in the decision. Complainant advised accordingly.

2	Complainant alleged Judge spoke rudely to him. He also alleged that the Judge after ruling that he had sued the wrong person, commented inappropriately regarding his likelihood of succeeding in a new action against the defendant's company. He further alleged that the Judge may have prejudged the claim. Other matters raised were redirected; one dealt with Supreme Court (appeal) Judge, one with another case on which the Chief Judge previously advised it was "in the nature of an appeal."	The tape of the proceedings showed that the Judge was courteous, not rude as the complainant suggested. It was clear that the complainant was allowed to present his case in its entirety and that the Judge had not prejudged the issue. The complainant was advised that it was not inappropriate for the Judge to comment on the frailties of his case were he to sue the right party.
3	Complainant alleged that the Judge said unjust, unkind things about her personally in giving reasons dismissing claim, criticized her severely for writing anything down, and made sarcastic remarks about her wearing a coat in Court.	The tape of the proceedings showed that the Judge was polite, patient and solicitous. At no time was he/she sarcastic or unkind. The complainant was advised that the comments that may have seemed unkind were made appropriately in the course of his/her findings in relation to credibility and strength of the case.
4	An employee of the judiciary who provides secretarial services to judicial officers alleged a Sitting Justice of the Peace treated her unfairly and inappropriately by demanding she perform duties not assigned to her and then publishing to colleagues displeasure with her refusal.	Both the complainant and the judicial officer advised the Chief Judge in writing of their perspective on the matter. At the suggestion of the Chief Judge they thereafter agreed to participate in an informal mediation facilitated by the Associate Chief Judge. Following the mediation, while the parties still disagreed as to certain facts, and the reasonable interpretation of the facts, both agreed there was nothing further which usefully could or should be done and the file should be closed. Additionally, as a result of the complaint, the Office of the Chief Judge has directed that there be changes in certain administrative procedures within the Court.
5	The complainants alleged that the Judge in a small claims case refused to conduct a trial and pressured them into a mediation and then into a settlement with which they were unhappy.	While the Judge may have spent more time than others in encouraging a settlement, the complainants appeared to have agreed to settle voluntarily and not under pressure. It was found that the Judge understood their concerns and had no desire to force a settlement. He/she was only attempting to conciliate what he/she considered to be a case with an uncertain outcome. The complainants and Judge were advised, however, that it is important that Judges take care not to give persons the unintentional impression that they have to settle rather than going to trial.
6	Complainant alleged that the Judge abused his/her power and required him to stand while addressing the Court even though he had been ill, was under medication and scheduled for surgery that afternoon.	The tape of the proceedings showed that as soon as the complainant mentioned his infirmity the Judge was clearly prepared to allow him to sit, and invited him twice to do so. The complainant was advised that it is customary that persons addressing the Court rise to do so. In this case the Judge responded appropriately to questions concerning this custom, and was

		courteous and patient throughout.
7	The complainant, a disputant in a traffic violation ticket proceeding, alleged the Sitting Justice of the Peace was "arrogant" and "pompous" in speaking to the complainant, and generally in the conduct of the hearing.	It was acknowledged that the Sitting Justice of the Peace could have been more patient and could have listened more effectively. The Sitting Justice of the Peace disagreed with the allegations but expressed regret that his/her conduct was upsetting for the disputant. No action was taken beyond communication of the foregoing to both parties.
8	The complainant alleged that in a payment hearing which the complainant attended by telephone, the presiding Sitting Justice of the Peace was aggressive and intimidating and failed to explain amounts included in the payment order which was being enforced.	The tapes of the proceeding established that there was no substance to the allegation that the Sitting Justice of the Peace was aggressive or intimidating. The complainant was informed that there was no issue of judicial misconduct, and that no further action would be taken.
9	The complainant Court Services Branch administrator alleged that the Judicial Justice of the Peace had acted inappropriately in berating court staff regarding certain administrative concerns and then in addressing the same issues in Court, in terms which reflected unfairly upon Court staff.	Upon examination, the Judicial Justice of the Peace's behaviour was found to be inappropriate in some respects. The Judicial Justice of the Peace provided an explanation and partial apology, and the matter was resolved by a letter to the complainant conveying same.
10	A Court Services Justice of the Peace (before receiving Justice of the Peace commission) had provided a character reference letter for an accused who was facing serious charges, for use in bail application. Inquiries determined that the accused was also believed by police to be implicated in a serious security matter affecting another member of the judiciary, and that the Justice of the Peace maintained a close association with the accused's spouse.	After consultation with the complainant and the judicial officer, it was determined that the judicial officer could retain his/her Justice of the Peace commission if he/she provided to the Chief Judge a written assurance that he/she would have no contact with the accused, accused's spouse and/or associates, as long as the criminal charges remained outstanding or the security risk continued. The assurance was provided and the matter resolved by letter and ongoing monitoring of the accused's charge.
11	Complainant alleged that Judge was unduly adversarial and displayed bias towards the other party, and that Judge's conduct was circumstantially suggestive of collusion with the claimant and his witness.	No collusion or perception of collusion found. While Judge in attempting to elicit information from the complainant at trial gave the complainant the impression he/she had predetermined the issue, investigation revealed that was not the case. Complainant advised that system of requiring cross-examination by self-represented party may be reviewed.
12	Judge had accused taken into custody for several hours in response to an inappropriate outburst. Accused had counsel, and was released without a finding of contempt. Accused complained of arbitrary and abusive exercise of power.	Remand in custody for contempt found to be within Judge's jurisdiction and discretion under the contempt powers available to Judges. Resolved by letter to complainant explaining power and finding no misconduct.
13	Complainant party in family proceedings alleged Judge was demeaning, condescending, confusing, rude and unhelpful, taunted complainant and mentioned "prior acquittals," although she had never been charged.	Judge acknowledged he/she may have overestimated complainant's ability to understand, and apologized for appearing demeaning, condescending, rude and taunting, as that was not his/her intention. Matter resolved by letter advising that complainant took wrong meaning from phrase, "you acquitted yourself well", explaining role of Judge, and

		including Judge's acknowledgement and apology.
14	Complaint of racial prejudice, bias and coercion on part of Judge at a settlement conference, that Judge used settlement conference to enforce his/her "white supremacist views", and that Judge forced complainant under duress to agree to settlement.	Complainant had included no specific allegations of incidents or remarks on the part of Judge and Judge denied same. Complainant advised that no evidence Judge was motivated by bias or racism in assertively encouraging him to settle claim with little merit, and no duress or misconduct found. Complainant previously advised to seek legal advice regarding appeal options.
15	The complainant complained of being bullied by a Judge at a settlement conference after complainant failed for the second time to file a reply.	The Judge provided a letter outlining the history of the file and a review of what occurred at settlement conference. The examination revealed that the complainant was a defendant who refused to comply with the rules in order to avoid dealing with the case. The Judge was justified in showing firmness to get the defendant to cease delay and comply with rules and Court orders.
16	The complaint, a disputant in a traffic violation proceeding, alleged that the presiding Judicial Justice of the Peace was biased in adjourning a case without hearing a specific application, including grounds for that application. The Judicial Justice of the Peace was dealing with a number of similar cases that day owing to the same officer being unable to attend court.	On investigation it appeared there had been an "omnibus" application in respect of a number of matters, and the Judicial Justice of the Peace exercised judicial discretion in adjourning some but not other cases. As this was a legitimate exercise of judicial discretion it was determined there was no basis for any further investigative or disciplinary action.
17	Complainant alleged that Judge smiled only at other party and witnesses, sneered at her witness and generally favoured other party, challenged decision relating to custody of child awarded to other party.	A review of transcript disclosed no evidence of bias. It appears complainant's perception was coloured by disappointment with outcome, and the reality of family litigation as a challenging and stressful process. The matter was concluded by a letter enclosing the Judge's response, finding no bias, expressing regret that complainant misinterpreted Judge's demeanour, and advising that complaint was in substance an appeal.
18	Complainant alleged hat he was not allowed to present his case and was yelled at by the Judge.	Tape of proceedings disclosed Judge did not raise voice, and afforded complainant sufficient opportunity to be heard. Matter resolved by letter finding allegation unsubstantiated.
19	Complainant alleged that Judge at a settlement conference was unprepared, rude and sarcastic and demonstrated hostility and antagonism.	Judge apologized for a sarcastic comment at the end of the proceedings, however, it was found that in all other respects, the conference's tone was set by the aggressive conduct of the complainant, which required a firm response from the Judge.
20	Complainant alleged that a Judge at a settlement conference stated in a derisive and condescending tone that a lawyer would never say what he said.	The Judge explained the context of the remark whereby he/she tried to explain that the law is not fixed and rigid and, further, that at a settlement conference the Judge is mainly on a fact-finding mission in an attempt to encourage a settlement, rather than deciding the case at that stage on the law. The Judge apologized for

		anything he/she might have said at which complainant took offence. No misconduct found.
21	Complainant alleged that Judge at settlement conference stated "none of us are making any money today are we" when complainant expressed concern about the expense he incurred in attending the settlement conference.	The Judge explained that litigants are often reminded about the cost to them of litigation, and Judge may well have told both litigants that neither of them (not "none of us") is making money being there. Complainant was advised that a Judge will often comment on the cost of litigation at the settlement conference. This can encourage settlement discussions and is quite proper in that forum.
22	Two separate complaints by friends of a litigant who had previously complained to the Chief Judge. Complainant raising same concerns as litigant (see 17 above) and as her advocate.	Complainants advised that matter already investigated and dealt with. Also advised that complaints raised relate primarily to outcome of the case which are appropriately dealt with by way of appeal.
23	The complainant complained about an apparent inconsistency between a Judge and Judicial Justice of the Peace with regard to treatment of debtor in successive payment hearings. He also complained about the demeanour of the Judicial Justice of the Peace, specifically frowning and shaking head.	The Judicial Justice of the Peace made a determination about debtor's ability to pay based on his current financial circumstances. Complainant advised that this was reasonable in the circumstances and that one judicial officer not bound by decisions of another, that the transcript disclosed nothing rude or intimidating, and if the Judicial Justice of the Peace frowned or shook head that is not inappropriate behaviour.
24	Complainant alleged that Judge altered and fabricated tapes of proceedings in the courtroom.	The Judge categorically denied allegations. On listening to the tapes no tampering was discernible. The complainant had also complained to the R.C.M.P. who were given the relevant tapes which were then returned. It was understood that no police investigation would be proceeding. The complainant was advised that there was no evidence to substantiate the accusation and that accordingly no issue arose as to the Judge's fitness to hold office.

APPENDIX A

Procedure Bylaw

In this bylaw:

(1) "Applicant" means an applicant for appointment as a provincial court judge.

(2) "Council" means the Judicial Council of British Columbia.

(3) "Chair" means the Chief Judge or the alternate presiding member, appointed under the Provincial Court Act, where the Chief Judge does not attend a meeting of the Council.

1. The Council is a continuing body notwithstanding any change in membership. The Council may complete any proceedings commenced before a change in membership.

2. The majority of the members of the Council is a quorum. A quorum must be present to hold any meeting, or to pass any resolution.

3. All powers of the Council may be exercised by resolution. An act or proceeding of the Council is valid when authorized or adopted by resolution at a meeting of the Council, provided that:

   (a) A resolution to approve an applicant for appointment will be defeated if any two members vote against approval. A resolution that an applicant not be approved for appointment will succeed if two or more members vote in favour of the resolution. Members present for such resolutions may not abstain.

   (b) A resolution to approve an applicant for interview will succeed if any three members vote in favour of the resolution.

   (c) To pass any other resolution at a meeting of the Council there must be a majority vote of the quorum in favour of the resolution. Each member has one vote but in the event of a tie, the Chair must cast a second and deciding vote.

4. Where any member has a conflict with respect to an applicant, or where there may be a reasonable apprehension of bias in respect of a member, that member shall be disqualified from participating in the interview of the applicant, and shall not participate in any vote with respect to the applicant. Such member shall refrain from involvement in all proceedings or discussions relating to the applicant. Any question regarding whether a member is in a conflict or whether

there is a reasonable apprehension of bias shall be resolved by general resolution. If disqualification of a member through conflict or bias reduces the number of members present below a quorum, the interview or vote in respect of the applicant must be adjourned to a time when a quorum is present.

5. The Chair will preside at all meetings of the Council, except when the Chair is not available, in which case, the alternate presiding member must preside.

6. The Council will meet approximately 10 times per year, as scheduled from time to time by the members at a meeting. Notice of the time and place of meetings will be given by the Chair to each member. Any member may attend any meeting of the Council.

7. The Council and its committees may meet in person, via telecommunications or a combination of both. All in person meetings of the Council will be held in Vancouver unless the Council resolves to hold a meeting elsewhere within British Columbia. All in person meetings of committees of the Council will be held in British Columbia at a place resolved by each committee. Notwithstanding the above, all meetings involving interviews of candidates or matters of discipline of judges shall be done in person.

8. Meetings of the Council will be private and confidential, but the Council may invite non-members to attend all or part of a meeting of the Council, except a meeting or a part of a meeting at which candidates are interviewed or votes are taken.

9. The Chair will preserve order at meetings and decide all points of order which may arise, subject to an appeal of any other member present. If an appeal is taken by a member from a decision of the Chair, the question will be decided without debate by a majority vote of the quorum.

10. A bylaw relating to the procedure of the Council may be made or amended by a general resolution passed at a meeting of the Council of which written notice was given in advance to all members.

11. The minutes of all meetings of the Council will be distributed to the members, adopted by resolution at the next meeting of the Council, and then signed by the Chair.

12. Where appropriate, the agenda of meetings of the Council will include:
    (a) minutes of previous Council meetings or committee meetings;
    (b) matters arising out of the minutes;
    (c) communications and inquiries;
    (d) reports from the Chair, or a committee;
    (e) applications for appointment;
    (f) disciplinary matters;

(g) new business;
(h) approval of expenses;
(i) next meeting.

13. The Council may from time to time by general resolution establish standing committees, as required. The chair of each standing committee will be named by the Chief Judge, and the Chair and the members will be approved by the Council.

14. In addition to the standing committees, the Chair, or Council by general resolution, may establish a select committee to consider any matter. The Chair will name the chair of such committees and the Council may name its members. A select committee may only consider the matter specifically referred to it by the Council or by the Chair.

15. The proceedings of all committees will be subject to the approval of the Council. The minutes of all committee meetings will be circulated to all members of the Council in advance of the Council meeting next following the meeting of the committee.

16. Minutes of a committee and resolutions set out in a committee's minutes will be deemed approved by the Council as of the date of the next Council meeting following their circulation, unless a Council member requests the Chair to call a vote at such meeting. The effective date of a committee resolution must be no earlier than the date of the next Council meeting following the meeting of the committee.

17. Except for judicial members, a member attending a meeting of the Council, a meeting of a committee or other business on behalf of the Council as authorized by the Chair, is entitled to receive payment of an allowance in such amount the Lieutenant Governor-in- Council considers appropriate, and any travel or out-of-pocket expenses.

18. This bylaw does not apply to the Council acting as a tribunal of inquiry under the *Provincial Court Act*.

19. With respect to procedural issues not covered by this bylaw, *Roberts Rules of Order* shall govern.

Procedure Bylaw adopted this 23rd day of March, 2001 at a meeting of the Judicial Council of British Columbia.

APPENDIX B

Statutory Provisions Governing Complaints

Provincial Court Act, R.S.B.C. 1996, Chap. 379

Powers and duties of chief judge

11 (1) The chief judge has the power and duty to supervise the judges, justices and court referees and, without limiting those powers and duties, may do one or more of the following:

(a) designate the case or matter, or class of cases or matters, in which a judge, justice or court referee is to act;
(b) designate the court facility where a judge, justice or court referee is to act;
(c) assign a judge, justice or court referee to the duties the chief judge considers advisable;
(d) exercise the other powers and perform other duties prescribed by the Lieutenant Governor in Council.

(2) Subject to section 25 (2), all complaints respecting a judge, justice or court referee must be directed in writing to the chief judge who, after examining the complaint, must report in writing to the complainant and to the judge, justice or court referee.

(3) The chief judge must conduct an investigation respecting the fitness of a judge, justice or court referee to perform his or her duties if

(a) the chief judge considers that an investigation is required, or
(b) the chief judge is directed by the Attorney General to conduct an investigation.

(4) On completing an investigation under subsection (3), the chief judge may

(a) take any corrective action that the chief judge considers necessary using the powers given the chief judge under this Act, or
(b) order that an inquiry be held respecting the fitness of the judge, justice or court referee to perform his or her duties

and the chief judge must submit to the Attorney General a written report setting out the nature of the investigation, relevant facts, the findings and any corrective action taken.

(5) If the chief judge orders an inquiry under subsection (4) (b), the chief judge must give written notice together with a copy of the report prepared under subsection (4) to the judge, justice or court referee.

If an inquiry is ordered

24 (1) Within 14 days of being notified under section 11 (5) or 23 (2) of an inquiry, the judge, justice or court referee involved must elect as a tribunal to conduct the inquiry either

(a) the council, or
(b) a judge of the Supreme Court to be designated by the Chief Justice of the Supreme Court.

(2) If the judge, justice or court referee fails to elect within the period referred to in subsection (1), the inquiry tribunal is the council.

(3) After the tribunal is constituted, the Attorney General must give any legal counsel retained under section 27 (4) a copy of the report made by the chief judge under section 11 (4).

(4) If an inquiry is ordered, the judge, justice or court referee involved is suspended from all duties with salary unless the chief judge orders that the suspension be without salary.

(5) A chief judge or associate chief judge who has conducted an investigation under section 11 (3) must not sit as a member of the council on an inquiry respecting the same matter.

Complaints respecting chief judge

25 (1) Sections 11 and 24 do not apply to a complaint or investigation respecting the chief judge.

(2) A complaint respecting the chief judge must be directed to the Attorney General who, after examining the complaint, must report in writing to the complainant and to the chief judge.

(3) If the Attorney General orders an inquiry under section 23 (1) respecting the fitness of the chief judge, the inquiry must be held before a tribunal consisting of a judge of the Supreme Court to be designated by the Chief Justice of the Supreme Court, and sections 26 to 28 apply.

(4) If an inquiry is ordered, the chief judge is suspended from all duties with salary unless the Attorney General orders that the suspension be without salary.

Scope of inquiry

26 In conducting an inquiry, the tribunal may consider all matters relating to a judge, justice or court referee that are relevant to the fitness of the judge, justice or court referee to perform his or her duties including the following:

(a) mental or physical disability;
(b) misconduct;
(c) failure in the execution of his or her office;
(d) conduct incompatible with the due execution of his or her office.

Inquiry procedure

27 (1) While an inquiry under this Act, a tribunal has the protection, privileges and powers of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*.

(2) An inquiry under this Act must be held in public unless the tribunal considers, in the public interest, that the inquiry or any part of it should be held in private.

(3) If an inquiry is to be held, the tribunal must give the judge, justice or court referee

(a) reasonable notice of the time and place of the inquiry,
(b) particulars of the matter being inquired into, and
(c) the opportunity, in person or by counsel, to be heard, to cross examine witnesses and to adduce evidence.

(4) For the purposes of an inquiry, the tribunal may retain legal counsel and determine counsel's remuneration, which must be paid out of the consolidated revenue fund without an appropriation other than this section.

(5) If the judge, justice or court referee resigns after an investigation has been commenced under section 11 (3) or an inquiry has been ordered under section 11 (4) or 23 (1), the investigation or inquiry must be completed unless the Attorney General orders otherwise.

Powers of the tribunal

28 (1) On the conclusion of an inquiry, the tribunal may order

(a) reinstatement of the judge, justice or court referee, with or without a reprimand,

(b) suspension of the judge, justice or court referee, with or without salary, for a further period of not longer than 6 months, or

(c) removal of the judge, justice or court referee from office.

(2) If a judge, justice or court referee is reinstated, and if during the suspension he or she did not receive his or her salary, the tribunal may order that the salary for the suspension period be paid to him or her.

(3) The tribunal must promptly notify the judge, justice or court referee involved, the chief judge and the Attorney General in writing of its order and the reasons for the order and must forward a copy of the order and reasons to the registrar of the Supreme Court, Vancouver, for publication.

(4) An order under subsection (1) (c) for the removal of a judge, justice or court referee is effective

(a) when an appeal under section 29 is dismissed, or

(b) when the time for an appeal has expired.

Appeals to Court of Appeal

29 Within 30 days after the notice under section 28 (3) was mailed or personally served on him or her a judge, justice or court referee may appeal to the Court of Appeal from an order made under section 28 (1), and the Attorney General is respondent in the appeal.